

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

On November 22, 2004, Petitioner Wilson Thomas submitted a pleading to the Ninth Circuit Court of Appeals, captioned: "Petition for Rehearing En Banc or Motion for Stay of Mandate Pursuant to Under Write [sic] of Habeas Corpus Pursuant to Title 28 U.S.C.A. § 2255, To Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody." Attached to the Petition submitted to the Ninth Circuit is a copy of a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 and a memorandum

1 of points and authorities in support of the Section 2255 motion.  
2 A copy of the docket in *Wilson Thomas v. United States*, No. CV-F-  
3 01-6614 OWW is placed in the file with the handwritten notation:  
4 "Should this go to DC? Should dc send this case up?" There is  
5 also a handwritten notation:

6 I think this belongs to your Court. It  
7 appears that the 9<sup>th</sup> Cir. has nothing for  
this person. Maybe this can be treated as  
his NoA. CoA has already been denied.

8 Thereafter, the Petition was filed in the Eastern District of  
9 California and assigned Case No. CV-F-04-6666 OWW (Doc. 216).

10 Petitioner filed a motion to vacate, set aside or correct  
11 sentence on December 28, 2001, which motion was assigned Case No.  
12 CV-F-01-6614. By Order filed on September 8, 2004, Petitioner's  
13 Section 2255 motion was denied as untimely. (Doc. 214) A  
14 Certificate of Appealability was denied by Order filed on  
15 September 8, 2004. (Doc. 215). Petitioner filed a Notice of  
16 Appeal on November 22, 2004. (Doc. 217). This Notice of Appeal  
17 is identical to the Petition for Rehearing En Banc, etc.  
18 According to a notation on the District Court docket entry for  
19 the Notice of Appeal: "[NOTE: Document was not entitled 'Notice  
20 of Appeal' was never construed as such. On 3/10/06 the 9<sup>th</sup>  
21 Circuit now says this is in fact an Appeal and needs to be worked  
22 up.]" (Doc. 217). On March 16, 2006, the appeal was processed  
23 and the record transmitted to the Ninth Circuit. (Docs. 218-  
24 219). Ninth Circuit Case No. 06-15521 was assigned to the  
25 appeal. (Doc. 220). On June 23, 2006, filed with the District  
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1 Court on July 5, 2006, the appeal of the denial of the Section  
2 2255 motion was dismissed, the Ninth Circuit declining to issue a  
3 Certificate of Appealability. (Doc. 222).

4 This action is DISMISSED. Case No. CV-F-04-6666 OWW was  
5 opened in error. It is apparent from the record that Petitioner  
6 did not file a Section 2255 motion on November 22, 2004; rather,  
7 the Petition for Rehearing En Banc, etc. was a Notice of Appeal  
8 to the Ninth Circuit from the denial of the Section 2255 motion  
9 in Case No. CV-F-01-6614 OWW.

10 For the reasons stated:

11 1. This action is DISMISSED.

12 2. The Clerk of the Court is directed to enter JUDGMENT FOR  
13 RESPONDENT.

14 IT IS SO ORDERED.

15 Dated: August 4, 2008

16 /s/ Oliver W. Wanger  
17 UNITED STATES DISTRICT JUDGE

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